

In the Matter of Factfinding:

-between-

CITY OF SAN GABRIEL

EMPLOYER

-and-

SAN GABRIEL POLICE
OFFICERS ASSOCIATION

UNION

CASE NO. LA-IM-180-M

FINDINGS

CONCLUSIONS

RECOMMENDATIONS

DAVID B. HART
CHAIRMAN

HEARING HELD

September 14, 2015

San Gabriel, California

RECEIVED
PUBLIC EMPLOYMENT
RELATIONS BOARD
2015 OCT 26 PM 3:02
HEADQUARTERS OFFICE

REPRESENTING:

CITY OF SAN GABRIEL

Steve A. Filarsky, Esq.
Filarsky & Watt LLP

REPRESENTING:

SAN GABRIEL POLICE OFFICER'S ASSOCIATION

Michael A. McGill, Esq.
Adams Ferrone & Ferrone

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JURISDICTION

This Fact Finding arises pursuant to Government Code Section 3505 concerning Impasse Procedures as administered by the Public Employment Relations Board (hereinafter may be referred to as "PERB") between the City of San Gabriel (hereinafter may be referred to as the "City") and the San Gabriel Police Officers' Association (SGPOA), (hereinafter may be referred to as the "Union").

Unable to reach a settlement, David B. Hart was selected to act as an impartial Chairman and empowered him to render an advisory recommendation in accordance with the PERB'S rules concerning Fact Finding. The Panel executive session and the Hearing was held within the stipulated time lines.

The Factfinding panel, in addition to the Chairman, included Mark Flannery, appointed by the City, and Ed McGehee, appointed by SGPOA.

The Hearing was held on the date set forth above and the parties had ample time to present evidence including documents and witnesses.

ISSUE

'WHAT TERMS SHALL BE INCLUDED IN THE SUCCESSOR AGREEMENT BETWEEN THE CITY OF SAN GABRIEL AND SGPOA.

PERB Criteria:

AB 646 (now contained the PERB Regulations) lays out a set of 8 criteria to be used by a fact finding panel:

"(d) In arriving at their findings and recommendations, the fact finders shall consider, weigh, and be guided by all the following

Criteria:

(1) State and Federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

1 (3) Stipulations of the parties.

2 (4) The interests and welfare of the public and the financial
3 ability of the public agency.

4 (5) Comparison of the wages, hours, and conditions of employment
5 of the employees involved in the factfinding proceeding with the
6 wages, hours, and conditions of employment of other employees
7 performing similar services in comparable public agencies.

8 (6) The consumer price index for goods and services, commonly
9 known as the cost of living.

10 (7) The overall compensation presently received by the employees,
11 including direct wage compensation, vacations, holidays, and other
12 excused time, insurance and pensions, medical and hospitalization
13 benefits, the continuity and stability of employment, and all other
14 benefits received

15 (8) Any other facts, not confined to those specified in paragraphs
16 (1) to (7), inclusive, which are normally or traditionally taken
17 into consideration in making the findings and recommendations. "

18 19 BACKGROUND

20 The City of San Gabriel is located in Los Angeles County and was incorporated
21 in 1913. The City's motto is "A City with a Mission" and is often called the
22 "Birthplace" of the Los Angeles Metropolitan area. At the 2010 census, the
23 population was 39,718 and has a total area of 4.1 square miles. The city is
24 approximately 9 miles east of downtown Los Angeles, and is bordered on the north
25 by the City of San Marino, on the east by the cities of Temple City and Rosemead, to
26 the south by Rosemead, and to the west by Alhambra.

27 The San Gabriel Police Officer's Association is the recognized bargaining unit
28 representing the 39 sworn police officers working for the City.

1 The San Gabriel Police department is a full-service law enforcement agency,
2 and in 2011, handled approximately 23,080 recorded incidents in the computer aided
3 dispatch system. Officers made 800 arrests and issued 26,309 citations. With 39 full
4 time police officers, that averages to 592 recorded incidents per officer per year and
5 just over 2 arrests a day.

6 The Chairman has looked at exhibits, documents and the oral presentation and
7 offers the following synopsis of the events leading up the current impasse.

8 In March 2014, the City Manager sent an email to POA President Jim Drabos,
9 saying the Council had a "unusually crowded" March calendar and negotiations for
10 a successor agreement with the POA would be discussed at some later date. The POA
11 did send the City their proposals for a successor agreement on or about May 27, 2014.

12 In April 2014, Assistant City manager Marcella Marlowe, sent an email
13 indicating among other things that the City has been studying the salary survey that
14 had been conducted, but the Council had not gave instructions yet to the negotiators.

15 On or about May 22, 2014, Marlowe sent an email saying among other things
16 that the Council had not given final instructions yet to the City negotiators.

17 On or about June 19, 2014, Marlowe acknowledging the POA proposal, and
18 saying the Council is formulating their position.

19 On June 30, 2014, the MOU expired.

20 On or about July 2, 2014, Marlowe sent an email saying the Council was
21 making progress, but firm direction had still not been given to the City negotiators.

22 In August 2014, the parties met and the City verbally gave the POA a proposal.

23 The parties met again in September 2014, and verbally discussed offers.

24 The parties met again in October 2014, and the City presented a proposal
25 verbally.

26 The parties met in November and December, 2014.

27 On or about December 29, 2014, Marlowe sent an email detailing a one year
28 and a three year proposal and saying the City's proposal was effective January 1,

1 2015. There were other matters or as the "POA" declared, "threats" that were
2 involved in the email.

3 The parties did meet in January and February, 2015, but the meetings it appears
4 did not go well.

5 Eventually impasse was declared.

6

7 **EMPLOYER POSITION**

8 On or about December 29, 2014, Assistant City Manager Marcella Marlowe
9 sent the following proposal by email to the Union:

10 **1 YEAR DEAL: JULY 1, 2014-JUNE 30, 2015**

11 0% SALARY INCREASE

12 \$1568 Cap on Monthly health Insurance Amount (essentially, the removal of
13 automatic escalator calculator provision), effective January 1, 2015.

14 Elimination of Donning and Doffing benefit

15

16 **3 YEAR DEAL: JULY 1, 2014-JUNE 30, 2017**

17 3%/1%/1% Salary increase over the term of the MOU (3% in year one, retroactive
18 back to the beginning of the MOU, 1% in year two, 1% in year three)

19 \$1568 Cap on Monthly health Insurance Amount (essentially, the removal of
20 automatic escalator calculator provision), effective January 1, 2015.

21 Additional 1.5% Salary Increase for POA members (as an external equity adjustment
22 as a result of the Police officer classification being between 5%-10% below the
23 median, using the 10 city survey data)-this means the Year One increase would be a
24 total of 4.5%, retroactive back to the beginning of the MOU

25 Elimination of Donning and Doffing benefit

26 Agreement to redistribute the pool money for FTO assignment pay from 11 FTOs to
27 8 FTOs, for an increase to the assignment pay

28 In response to requests from various associations, the Council has agreed to include

1 a provision for each year of this MOU (once per year for three years) to permit
2 employees at their discretion to cash out one week (40 hours) of accrued but unused
3 vacation time. For years two and three, the cash out would likely occur in November,
4 as it did in the previous MOU. For year one, since we've already passed the
5 November date, the time of the cash-out would depend on when the MOU was
6 approved."

7 On or about April 23, 2015, Marlowe sent the following by email:

8 "On Tuesday evening, April 21, 2015, the City Council reviewed, and discussed in
9 great detail, your written offer dated March 31, 2015. The City Council rejected the
10 following proposals made by your bargaining unit:

11 1) Shift Selection

12 2) 5% FTO Pay (the City's offer of 3.5% remains on the table)

13 In addition, your proposal did not address the City's proposal to remove "donning and
14 doffing" from the MOU; the City Council's position remains unchanged on the
15 removal (without any corresponding quid pro quo). One additional item is not
16 addressed by your proposal - the Lexipol policies; attached is the Side Letter with
17 PMG on the issue (the City is looking for similar language with the SGPOA).

18

19 This three (3) year offer, and retroactivity back to July 1, 2014, will expire on
20 Thursday, May 7, 2015 at 5:00 p.m. Thereafter only the City's one (1) year offer will
21 remain on the table. If the three (3) offer is not accepted, and ratified, by May 7,
22 2015, the City will declare impasse on May 8, 2015. As you know, the City does not
23 have an Employer-Employee Relations Resolution in effect. As part of any impasse
24 process the City is willing to utilize a mediator from the State Mediation and
25 Conciliation Service."

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UNION POSITION

It is clear that interests of the public support having a highly competent, proactive and well-maintained police force. Better benefits attract and retain better candidates and employees. These undisputed facts, in conjunction with a clear ability to pay, and an analyses of where the POA stands in the marketplace (discussed below), support spending approximately \$15,000 towards a benefit that would markedly improve working conditions, improve morale and reach a fair resolution with its police force. Stable employer-employee relations also further that public interest. The elimination of a benefit (donning and doffing) for no substantive reason, when it is not necessary from a financial perspective, does not foster a harmonious working relationship. Further, the POA's request to increase FTO pay by 2.5% for 8 individuals at such a minuscule cost, and offer members the ability to trade shifts or select shifts based on seniority, are so insignificant to the City, but are meaningful to members. In exchange for seeking more money, the POA is simply looking for morale boosters to attempt to create a positive work atmosphere.

The Union has submitted the following for the Chair and panel to consider:

"In light of each of the following, the POA rejected the City's proposal:
6 month delay in bargaining by the City, the failure to come to the table with
a meaningful proposal for over failure to ever produce a written proposal at
the bargaining table in over 14 months of negotiations and numerous face to
face meetings, the regressive proposals from a 2% market adjustment to a
1.5% market adjustment, the threatening of a new 1 year proposal after 10
months of negotiations, the threatening of implementing the medical cap

retroactively, the threatening to impose a 1 year proposal with no wage increases, the threatening to impose a 1 year proposal with no monetary increase but a retroactive medical cap which would result in members having to reimburse the City, the outright refusal to have any meaningful discussion with the POA about any items they proposed and any compromise or work around to address management's concerns, the interjection of agreement, at the last minute, with little to no discussion of a policy manual that contains over 500 pages of negotiable and non-negotiable items."

4. Current Situation

| Item | City's Position | POA's Position | Status |
|--|--|---|---|
| 3 Year Proposal: -Wage Increase, 3% effective 7/1/14, 1% effective 7/1/15, 1% effective 7/1/16 -Market | As explained above, the City unilaterally took the 3 year proposal off the table, and is now offering the 1 year proposal, which includes no wage increases. | POA had agreed to the City's 3 year proposal. | At issue. The City has agreed to provide the benefits of the 3 year proposal to every other bargaining unit in the City, including the retroactive components.)except on the market adjustment—that depends on where you fall in the market(The 1 year proposal is clearly just a way to either force the POA to accept the City's proposal, or retaliate against the POA for |

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| 1 | Adjust | | exercising their |
| 2 | ment of | | bargaining rights. |
| 3 | 1.5% | | |
| 4 | based | | |
| 5 | on | | |
| 6 | being | | |
| 7 | 5%- | | |
| 8 | 10% | | |
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| 29 | e, 0% | | |
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| Elimination of donning and doffing | | | |
| Field Training Officer pay | The City has rejected the POA's proposal. | POA requested that the current FTO pay be increased by 2.5% to a total of 5%, commensurate with the marketplace. | <p>At issue.</p> <p>This is 1st of the 3 issues that kept us from having an agreement.</p> <p>The cost of providing an additional 2.5%)based on top step(is \$158.48 per month, or \$1,901.76 per year. The POA agreed to only have 8 FTO's, at a total cost of \$15,214.08.</p> <p>This increase is also predicated upon the City's revamping of the FTO Program, which included draft a brand new policy and procedure, outlining new functions of the position and testing requirements.</p> |
| Shift Bidding | The City has rejected the POA's proposal. | <p>Currently, the POA members must change shifts every 2 years—go from days to nights, or nights to days.</p> <p>The POA initially proposed to have seniority shift bidding, but when that was rejected, softened the request, so that the</p> | <p>At issue.</p> <p>This is 2nd of the 3 issues that kept us from having an agreement.</p> |

| | | | |
|------------------------------|--|--|---|
| | | current system could remain intact, but that members would have the option to trade shifts, as long as it did not negatively impact the operations, or result in overtime increases. | |
| Donning and doffing | <p>The City has proposed to eliminate this benefit.</p> <p>The City and the POA were involved in litigation years ago over the compensability of overtime for time spent donning and doffing. The parties settled that matter with the City agreeing to provide a few minutes at the start of their paid shift and at the end of their paid shift to don and doff.</p> | The POA has rejected eliminating this benefit as it was achieved through the settlement of litigation, and has a cost value. The POA proposed providing something in return for it, but the City has declined. | <p>At issue.</p> <p>This is 3rd of the 3 issues that kept us from having an agreement.</p> <p>Note: there was extensive conversation at the table about why this change was needed. The City made clear that there were no administrative issues with this benefit, but that the City simply wanted to remove it because they felt that the law no longer required them to provide it.</p> |
| Lexipol Policy Manual | The City interjected this item at the last minute, and has never produced a copy of the manual at the bargaining table. | The POA is not resistant to the manual; but it appears difficult to fully discuss and negotiate the manual at the bargaining table when other items are being discussed. | <p>Not sure if this is at issue.</p> <p>The POA is fine with continuing to meet with the PD personnel to discuss and negotiate this policy manual. But is impossible for the POA to simply "ok" it as part of a contract negotiation when there has been no discussion on it.</p> |

In essence, here are the 3 items that separate the parties:

| Item | Pros | Cons |
|--|---|---|
| An increase of Field Training Officer pay by 2.5% for 8 people. | <p>Brings the FTO to market.</p> <p>Rewards members for spending the time to enhance their abilities to train.</p> <p>Creates a financial incentive to train.</p> <p>Helps restore morale within the Department and foster a belief that the City cares about its officers.</p> <p>Reaches agreement on a new 3 year MOU.</p> | Costs the City \$15,214.08 per year, the City has a general fund operating budget of \$36,000,000. |
| Establishing some policy that allows members to select preferred shift, as long as it doesn't cost the City more money and doesn't negatively impact the organization. | <p>Costs no money.</p> <p>Helps restore morale within the Department and foster a belief that the City cares about its officers.</p> <p>Reaches agreement on a new 3 year MOU.</p> | None. |
| The City wants to change the status quo by eliminating donning and doffing. | Unknown. | <p>Results in a concession to the POA members, that does not appear needed based on all the discussions with the City.</p> <p>There is some sort of hidden desire to remove this, that appears motivated by something other than a legitimate or tangible need by the City.</p> <p>Helps destroy morale within the Department and foster a belief that the City does not care about its officers.</p> |

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| | | Violate the terms of a settlement agreement, resulting in more litigation. |
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ANALYSIS

It is generally believed that the best labor-management contracts are those that are negotiated through bargaining without outside assistance. There are instances however, where the parties find it difficult or impossible to reach agreement by direct negotiation. In such situations the fact-finding process can often provide a mechanism for resolution. It is certainly not the panel's intention to prolong the dispute or erect obstacles that impede resolution. It is also not our intent to "split the baby" so to speak.

The Chairman is cognizant of the fact that the current dispute has roots in the economic conditions of the times and the local political climate . The nature of the issues and the current state of relations of the parties are of obvious significance.

While it is generally prudent to try and achieve a long-term settlement, the Chairman notes that both parties to these proceedings have indicated their desire for a long term agreement. Accordingly, the recommendations set forth herein will not contain any re-openers and it is hoped the parties will use these recommendations to bring this dispute to an end.

1 The presentation by both parties, were concise and to the point. Panel
2 members questions to the parties during the course of the hearing gave the panel a
3 general historical context in which to assess the differences which now
4 predominate the situation confronting the parties.
5

6 After careful consideration and examination of the presentations and
7 documents, the Chairman presents the following recommendations in the hope the
8 parties can use these recommendations to reach an agreement. Unilateral
9 implementation of terms and conditions by the Employer would tend to disrupt
10 good labor relations. Good labor relations are a desired goal.
11

12 The panel members have had an opportunity to concur or dissent on the
13 issues as put forth by the Chairman, and attached to these recommendations are
14 those notations.
15

16 RECOMMENDATIONS

17 The parties should adopt the December 29, 2014, three year proposal as put
18 forth by Marcella Marlowe. The Chairman recommends the parties amend said
19 proposal to reflect an across the board wage increase of 5.5% effective October 1,
20 2014. The next wage increase would be effective July 1, 2016, of 1 %. The term
21 would be through June 30, 2017.
22

23 The chairman is convinced that this the time to focus on money in the
24 pockets and retirement of the sworn officers.
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Respectfully submitted;

A handwritten signature in dark ink, appearing to read 'David B. Hart', is written over a horizontal line. The signature is slanted and includes a long, sweeping underline that extends to the right.

David B. Hart
Chairman

Signed and dated this 20th day of October , 2015

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SAN GABRIEL POLICE OFFICER'S ASSOCIATION

PANEL MEMBER ED MCGEHEE

AS TO CHAIRMAN'S RECOMMENDATIONS

(See attached)

CONCUR

DISSENT X

ED MCGEHEE

Panel Member

Signed and dated this 16TH day of October, 2015

Subj: **Your results**
Date: 10/16/2015 5:45:19 P.M. Pacific Daylight Time
From: EM054@squpd.com
To: davearb@aol.com
CC: mmcgill@adamsferrone.com, JD068@squpd.com

Sir, There are several issues that do not appear to be addressed in your correspondence, which I received in my mailbox at work today, 10-16-15. First, on page 7 of your synopsis, under union position, you mention our assertion that the FTO pay issue (increase to 5%) is a minuscule cost item, which would greatly improve moral. You also summarize that the elimination of the donning and doffing benefit under the circumstances, does not foster a harmonious working relationship. Additionally, you reference the dispute between parties regarding the Lexipol documents.

In your recommendations on page 14, you suggest the salary increase (original City offer) and state that this is the time to focus on money in the pockets of the sworn officers. You do not, in the summary address the Lexipol issue or a resolution, and you do not address the donning and doffing issue, unless by their omission, you are saying that you no longer agree with our arguments on these matters and you are inferring we give up donning and doffing since you do not mention it further or specifically.

I am also confused that you seem to agree with our assertions regarding the justification for the FTO increase to 5% as you stated in the passages I referenced, unless I am misreading the document. Yet, you seem to again omit this item in your summary at the bottom of page 14. Since you do not mention this item specifically, am I to again infer by its omission that you side with the City's argument in favor of the increase to only 3.5%? It seems odd to make the statement at the very end, "that this is the time to focus on money in the pockets of the sworn officers," and yet recommend the City's original proposal in resolving the issue, since the City's original offer did not include anything for the police officers that was not given to all misc. city employees, and in fact asked us for concessions.

In regards to the issue with the Lexipol document, do you have any suggestion to resolve this issue?

Having never been through this before, I expected a more substantive recommendation on the specific items. I have no frame of reference as to whether this is typical, or if there was some omission in not mentioning each item in your summary. Can you provide more clarification?

Thank you,
Ed McGehee

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CITY OF SAN GABRIEL

PANEL MEMBER MARK FLANNERY

AS TO CHAIRMAN'S RECOMMENDATIONS

CONCUR X

DISSENT

(See attached)

MARK FLANNERY

Panel Member

Signed and dated this 14TH day of October, 2015

From: Mark Flannery markhoff@roadrunner.com
Subject: San Gabriel POA
Date: October 14, 2015 at 1:22 PM
To: DaveArb@aol.com

I have received your Findings etc. in the San Gabriel POA issue. I will mail the signature page today. It includes this Comment for the record:

With respect to the "Recommendations", I assume that the 5.5% represents the 4.5% offered 7/1/14 and the 1% offered 7/1/15 (it is NOT in addition to the previous offer). I see no basis to make the proposed 7/1/15 increase of 1% retroactive to October 1, 2014. As to the retroactive 4.5%, I do believe some measure of retroactivity is appropriate; however, I believe the proposed October 1, 2014 date goes too far.

Mark Flannery

14 Oct 15